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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/732,595	12/08/2000	Tad Hogg	A0854	2803

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SEATTLE, WA 98104

EXAMINER

PATEL, JAGDISH

ART UNIT PAPER NUMBER

3624

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/732,595	<b>Applicant(s)</b> HOGG ET AL.	
	<b>Examiner</b> JAGDISH PATEL	<b>Art Unit</b> 3624	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 July 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This communication is in response to applicant's response to restriction requirement filed 7/22/2005.

#### ***Election/Restrictions***

2. Upon further consideration and in view of the applicant's amendment of the claims the election requirement has been withdrawn. Accordingly, currently claims pending claims 1-36 have been examined.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The method step "analyzing at least a plurality of initially unaccepted offers" fails to specify objective of the analysis. Mere stating that a subject matter is being analyzed does not convey the objective of the analysis. For example, "analyzing the financial markets" does not indicate the objective of the analysis. On the other hand "analyzing the financial markets for future volatility trends" clearly defines the objective of the analysis. This analysis applies to all independent claims 1, 9, 16, 24, 31 and dependent claims identified above.

Claims 2-3, 10-11, 17-18 are rejected on the ground that the diving step fails to positively recite obtaining an analyzed value for each of the plurality of commodities. The claims recite

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this step only as intended function. For example claim 2, recites this limitation as “to obtain an analyzed value...” as intended function or objective of the dividing step.

Claim 2-3 are further rendered indefinite because the relationship of the process steps of claim 2 to the selecting step of claim is unclear. How is the analyzed value for each of the commodities (even if positively recites as per foregoing discussion) relate to the selecting step which only states that the selecting is based on the analyzing? Likewise, the functional relationship of the step “selecting a price” of claim 4-5 to claim 1 method steps is unclear.

Please provide explanation or amend the claim as appropriate.

Note that this analysis is representative of other corresponding claims of the system and apparatus where present. (Refer to claims 10-13, 17-20, 25 and 32-33).

### ***Claim Rejections - 35 USC § 102***

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Claims 1, 9, 16, 24, 31 and 34 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Irribarren et al. (US Pat. 2002/0065769). (hereafter Irribarren).

As per claim 1, Irribarren teaches a method for identifying latent demand for at least one of a plurality of commodities. The method of Irribarren comprises identifying a latent demand based upon analysis of initially unaccepted offers (para [0142] referring to Figure 11] and

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selecting at least one of the plurality of commodities to offer for sale which satisfies at least one criteria that identifies a latent demand ..based on the analyzing ([0144] quantity of business that a given buyer client demand is still unmet ..difference in the price that the buyer is willing to pay and the vendors are willing to sell)

System and apparatus claims 9, 16, 31 correspond to the method claim. It is asserted that these claims therefore also read on the Irribarren considering that Irribarren is a computer implemented method (See Fig. 2).

Referring to claims 24, 31 and 34 which refers to offering to sell based on an average offer for the commodity please refer to para [0151].

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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7. Claims 6-8, 14-15, 21-23, 26-30 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irribarren et al. (US Pat. 2002/0065769).

Irribarren fails to teach various features recited in the subject claims. For example, the characteristics of the at least one of the commodities being a combination of two or more items, obtaining the offers for each of the pluralities of the commodities from at least two different sources. Official Notice is taken that the aforementioned features are old and well known in the commerce and in particular in the art of auctioning.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to implement such features in the Irribarren in order to improve the usefulness of the sales process by covering all types of commodities and broadening the participation by interested parties.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH PATEL whose telephone number is (571) 272-6748. The examiner can normally be reached on 800AM-600PM M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 517-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jagdish N. Patel

(Primary Examiner, AU 3624)

2/12/05